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CHAPTER 771. EMPLOYEE GRIEVANCES AND ADMINISTRATIVE APPEALS
To Be Used With 5 CFR 771

1. SCOPE

a. **General.** This section establishes policies, principles, and procedures for the presentation and consideration of employee grievances.

b. **Employee Coverage.** This grievance procedure is available to all employees of the VA, except for the following:

(1) A noncitizen appointed under Civil Service Rule VIII, section 8.3 of title 5, Code of Federal Regulations;

(2) An alien appointed under section 1471(5) of title 22, United States Code;

(3) A VA physician, dentist, nurse, or other employee appointed under chapter 73 of title 38, United States Code. This exception does not apply to Licensed Practical or Vocational Nurses, Licensed Physical Therapists, and Certified or Registered Respiratory Therapists employed under 38 U.S.C. 7401(3);

(4) An individual paid from funds as defined in section 2105(c) of title 5 (not applicable to the VA) or section 7802(5) of title 38, United States Code i.e., Excepted Service Veterans Canteen Service employees;

2. POLICY

a. **General.** It is the policy of the VA to identify, prevent and make reasonable efforts to correct the causes of employment related dissatisfactions. The filing of formal grievances is not to be discouraged or prevented since this procedure is the final and sometimes necessary means of resolving disputes. However, efforts will be made to resolve such disputes informally. All individuals involved in grievance proceedings, whether employees, employee representatives, or members of management, are expected to be candid and to act in good faith, not only in following the letter of the grievance procedure, but in observing the underlying spirit and intent in attempting to resolve dissatisfactions.

b. **Freedom From Reprisal.** No employee will interfere with, or attempt to interfere with, another employee's exercise of rights provided by this chapter. Furthermore, an employee and his her representative will be assured freedom from restraint, interference, coercion, discrimination, or reprisal in exercising, or attempting to exercise, rights provided by this chapter.

c. **Consultation in Presenting Grievances.** In presenting a grievance, an employee may communicate with and seek advice from the Human Resources Management Service or Division, a supervisor or official above the employee's immediate supervisor, or an equal employment opportunity counselor.

d. **Official time.** Grievants and their VA-employee representatives will have a reasonable amount of official time to present grievances if otherwise in a duty status. Official time will not be granted for the preparation of grievances.

e. **Informal Resolutions.** Nothing in this procedure shall prohibit reasonable attempts to resolve, at any time, a grievance that is being processed. Informal resolutions are encouraged at any stage of the system. Management should explore alternative solutions to resolve employee grievances at the earliest stage possible, since informal resolutions often avoid unnecessary costs related to lost productivity, poor morale, and diminished services.

3. RESPONSIBILITIES

a. **Management.** Management officials will be responsible for administering the VA grievance procedure and for bringing it to the attention of employees.

b. **Supervisors.** Supervisors are responsible for listening to employee complaints and attempting to clarify and make reasonable adjustments to address problems that arise in daily relationships with employees.

c. **Human Resources Officers.** Human Resources Officers and their staffs will provide guidance and technical advice to management and employees regarding the administration of the grievance procedure.

d. **Grievance Examiner.** Grievance Examiners are responsible for making an impartial and objective inquiry regarding the merits of a grievance and for providing a report of findings and recommendations to the parties involved.

4. DEFINITIONS

a. Grievance means a request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to employment which is subject to the control of agency management. Matters not covered by the grievance procedure are listed in appendix A.

b. Employee may include a former employee of the VA for whom a specific remedy can still be appropriately provided. For example, a former employee charged with 8 hours absence without leave AWOL who has requested that the 8 hours of pay be restored. Former employees must have filed a timely grievance in accordance with the provisions of this chapter in order to receive consideration.

c. Bargaining unit employee means an employee included in an appropriate unit as determined by the Federal Labor Relations Authority, for which a labor organization has been accorded exclusive recognition.

d. Personal relief means a specific remedy directly benefiting the grievants, but may not include a request for disciplinary or other action affecting another employee.

e. Grievance File means a separate file subject to the Privacy Act which contains all documents related to the grievance, including, but not limited to, statements of witnesses, records or copies thereof, the report of the hearing when one is held, statements made by the parties to the grievance, and the decision.

f. Decision Official means an official designated to (1 receive and attempt to adjust formal grievances; (2 refer formal grievances for further review and inquiry; and (3 decide formal grievances based on the results of impartial reviews and recommendations.

g. Days means calendar days.

5. OFFICIALS AUTHORIZED TO SETTLE GRIEVANCES

a. **Informal Grievance Procedure.** Responses required at the informal stage of the grievance will be made by the immediate supervisor or official with authority to settle the issue.

b. **Formal Grievance Procedure.** Authority to make a decision when the formal stage of the grievance procedure is reached will be exercised as follows:

(1) **Grievances of Facility Employees.** The facility Director will be the decision official on a grievance from an employee under his her jurisdiction provided the matter to be resolved comes under the Director's authority. The department head, Deputy Under Secretary, or staff office director is responsible for designating an appropriate official on a case-by-case basis who may decide the formal grievance of an employee occupying a field position which is centralized to the Secretary or to a department head, Deputy Under Secretary or staff office director. The individual designated to decide the formal grievances of occupants of centralized positions should be the lowest official in the supervisory line who has authority to settle the grievance.

(2) **Grievances of Central Office Employees and Facility Employees Not Under the jurisdiction of the Facility Director.** The Secretary, Under Secretary, Deputy Under Secretary, or department head or staff office director, as appropriate, is responsible for designating an appropriate official on a case-by-case basis who may decide the formal grievance of an employee in Central Office or an employee in the field who is not under the jurisdiction of a facility Director.

(3) Exceptions

(a) The normal decision official, as designated in subparagraph (1) and (2) above, will not decide the grievance when:

1. The decision official is the official with who the employee would take up the initial grievance in the informal stage;

2. The decision official does not have the authority to make a determination on the grievance issues; or

3. The decision official made the decision or took the action on which the employee's grievance is based.

(b) In these instances, the decision official will refer the grievance through channels, and another official will be designated to make the grievance decision.

6. REPRESENTATION

a. **Election of Representation.** An employee may present a grievance with or without representation.

b. **Designation of Representative.** An employee has the right if he/she so chooses to be accompanied, represented, and advised by a representative of his or her choice at any stage of the procedure. If a grievance is presented under the formal grievance procedure, designation of a representative will be in writing and will be submitted to the decision official. Any change of representative will be in writing.

c. **Disallowance of Designated Representative.** A representative may be disallowed by a line official because of priority needs of the service; unreasonable cost to the Government; conflict of position; or conflict of interest. The disallowance of a representative will be in writing, and will be issued within 5 days of receipt of the employee's designation of representative. The notice of disallowance will inform the employee of the basis on which the determination to disallow is made, and the right of the employee to challenge the disallowance.

d. **Challenge of Disallowance of Designate Representative.** If informed that a designated representative has been disallowed, an employee may, within 5 days, challenge the disallowance in writing to the decision official. A challenge should state the reason for disagreeing with the disallowance, and whether the employee wishes to proceed with the grievance or want for a decision on the challenge. A final decision on a challenge of disallowance of a representative will be made no later than 10 days after receipt of the challenge by the appropriate official.

e. **Change of Designated Representative.** In the event that an employee changes representatives during the proceeding, any disallowance of representative or challenge regarding a disallowance will be resolved in the above manner.

7. TIME LIMITS FOR PROCESSING GRIEVANCE

a. **Time Limits.** A decision on a grievance will be issued within the shortest time frame possible. To ensure timely and orderly processing, the following time limits are established for each stage of the grievance procedure:

(1) 15 days from the date of the incident or action on which the grievance is based for employee to initiate grievance.

(2) 10 days for completion of action under the informal procedure.

(3) 10 days for employee to file a written grievance under the formal procedure after completion of action under the informal procedure.

(4) 10 days for deciding official to adjust or refer grievance for inquiry by examiner or for technical review after employee files formal grievance.

(5) 30 days for completion of the inquiry when the examiner is appointed locally.

(6) 45 days for completion of the inquiry when the examiner is appointed by Central Office.

(7) 30 days for Central Office to issue technical reviews when requested to do so by the decision official.

(8) 15 days for issuance of the decision after the decision official receives the examiner's report of findings and recommendations or the Central Office technical review, unless the decision official takes exception to the findings and recommendations of an examiner.

b. Delays in Processing Grievances. Management officials should insure that grievances are processed promptly. Management delays in any stage of the grievance procedure beyond the prescribed time limits will be explained to the employee and the employee's representative, and will be documented for the record. Such delays should be rare and held to a minimum. If the employee delays in any stage of the grievance procedure, management will determine whether there was good cause and whether the grievance should continue to be processed. Such delays and explanations will be documented for the record. This includes any delay created by the denial of an employee's representative or by challenge to the denial.

8. INFORMAL GRIEVANCE PROCEDURE

a. Presenting Grievance Under Informal Procedure. An employee desiring consideration of a grievance must first seek informal adjustment of the matter through supervisory channels. The employee's request for informal adjustment of a grievance should be made as soon as possible, but not later than 15 days after the date of the incident or action upon which the grievance is based, or the date upon which the employee became aware of, or should have become aware of, the incident or action upon which the grievance is based. The initial presentation, which may be oral or written, is normally made to the immediate supervisor. Subsequent presentations must be in writing. If the grievance is presented orally, the employee may make clear that he/she is presenting a grievance, in order to distinguish grievances from mere inquiries. Supervisors who receive oral grievances will prepare a written summary of the oral presentation and will notify the grievant of the decision in writing.

b. Grievance on Continuing Condition or Practices. An employee may present a grievance concerning a continuing practice or condition at any time. Situations caused by actions which were taken or were identified as of a given date e.g., admonishments, reprimands, reassignments, shift or duty assignments, are not considered continuing conditions for these purposes despite any continuing effects they may have.

c. Resolving Grievance. The supervisor to whom a grievance has been presented for informal adjustment will attempt to resolve it as expeditiously as possible, seeking the advice and assistance of others where necessary, and will give the employee a written decision on the matter within 10

days from the date of the request for informal consideration. If the relief sought is not granted, the employee should be advised of the right to present the grievance under the formal procedure.

d. **Mandatory Use of Informal Procedure.** The employee must complete processing under the informal procedure before a grievance concerning the same matter will be accepted for processing under the formal procedure.

9. FORMAL GRIEVANCE PROCEDURE

a. **Presenting Grievance Under Formal Procedure.** If the employee is not satisfied with the informal answer, he/she may present the grievance in writing under the formal procedure. The formal grievance must be filed through supervisory channels within 10 days after receipt of the answer under the informal procedure. The time limit may be extended by management when good cause is shown by the employee. Normally, the formal grievance should be submitted through the employee's immediate supervisor.

b. Contents of Formal Grievance

(1) The formal grievance will be in writing, will contain sufficient detail to identify and clarify the basis for the grievance, and will specify the personal relief requested by the employee. It will contain the following information:

(a) The specific act or incident on which the grievance is based; the date the action or incident occurred (if known), and the date the employee first learned of the action (if appropriate).

(b) The reasons for which the employee believes that the action was unjustified or that he/she was treated unfairly; and/or the specific policy (agency, station, etc.), written agreement, or provision violated and how it affected the employee.

(c) The corrective action desired by the employee.

(2) A sample format for an employee's formal grievance is contained in appendix B to this chapter.

(3) If the formal grievance does not contain a statement of the grievance giving essentially the information specified above, the decision official will return the grievance to the employee so that the necessary information may be furnished. If the employee fails to provide necessary information after being provided with an opportunity to do so, the decision official should reject the grievance following procedures contained in paragraph 10 of this chapter.

c. **Group Grievances.** When a group of employees has an identical formal grievance, it will be considered in the same manner as an individual complaint and the decision will be binding on all employees. The group will select one individual case for processing under the provisions of the formal grievance procedure.

d. **Routing Formal Grievance.** The immediate supervisor or other official receiving the employee's formal grievance will refer it promptly through channels to the appropriate decision official.

e. **Grievance File**

(1) When a formal grievance is submitted, Human Resources Officer will be notified promptly by the appropriate decision official. The Human Resources Officer will establish a grievance file, separate from the employee's personnel folder, which will contain the employee's grievance and designation of representative, notices, written replies, and material or evidence used to support administrative action (if the grievance is based on a disciplinary or other administrative order; copies of relevant policies; and any other information considered appropriate for review in making a decision on the grievance. The grievance file will be expanded as more information is developed. If an examiner is appointed to inquire into a grievance, he/she will add appropriate information to the file based on any inquiry made. When grievances are filed by SES employees, the Deputy Assistant Secretary for Human Resources Management will perform the same functions as the Human Resources Officer.

(2) The grievance file must not contain any document that is not available to the employee or the employee's representative for review. Medical records which cannot be disclosed to the employee in accordance with 5 CFR 297.204c of OPM regulations or MP-1, part II, chapter 21, paragraph 1b cannot be included in the file. Information made available to the examiner which cannot be provided to the employee in the same form in which it was received, must be included in the file in a form which the employee can review or must not be used. In this regard, the file will not contain unsanitized, confidential, or personal records of employees other than the person filing the grievance (for example, appraisals of performance and personal qualifications).

f. **Nonconformity With Procedure**

(1) When an employee, either orally or in writing, presents a grievance to a supervisory or administrative official without following the provisions of the grievance procedure, such official will make certain that the employee is fully informed of the correct procedure and will inform the employee that the VA requires that the grievance procedure be followed in the interest of prompt, orderly, and systematic handling of all cases.

(2) It is contemplated that every effort will be made by both management and employees to conform to the prescribed grievance policy and procedure. However, minor and unintentional technical violations, whether by management or the employee, which do not affect the general equity with which a case is presented or handled, will not in themselves preclude proceeding with a grievance, nor invalidate any action or decision taken in connection with the grievance.

g. **Grievance Based an Administrative Decision.** Where an administrative decision or action affecting an employee forms the basis of the employee's grievance, the right to file a grievance will not be available to the employee until the effective date of the action on which the grievance is based. The grievance procedure itself will not delay the implementation of an administrative decision.

h. Adjustment or Referral of Grievance by Decision Official. Unless the decision official rejects or returns the grievance for additional information, that official will review the employee's grievance and the grievance file and explore the possibility of adjusting the grievance to the employee's satisfaction. If the decision official is unable to resolve the grievance in a manner acceptable to the employee, the grievance will be referred for inquiry by an examiner or for technical review by appropriate official within 10 days of the decision official's receipt of the formal grievance.

10. REJECTION OR CANCELLATION OF A GRIEVANCE

a. **Reasons for Rejection of a Grievance.** The decision official may reject a grievance for any of the following reasons:

(1) Does not furnish sufficient detail to clearly identify the matter being grieved;

(2) Does not specify the personal relief sought, or the specific relief is not personal to the grievant NOTE: A more detailed explanation of personal "relief," including specific examples is contained in FPM ch. 771, subpar. 2-3e;

(3) Consists of a matter or matters that are not covered by the VA grievance procedure (see app. A, of this chapter);

(4) Is not timely see par. 7 for specific time limits.

b. **Grievance May Not Be Rejected in the Informal Procedure.** A grievance may not be rejected in the informal procedure for any reason. If the grievance is not timely or does not meet criteria for processing under the grievance procedure, the employee should be so advised. However, the employee will be allowed to submit the grievance under the formal procedure if he/she so desires.

c. **Written Notification of Rejection of Formal Grievance.** The grievant and his or her representative will be notified in writing when a formal grievance rejected, and provided with the specific reasons for the rejection.

d. **Discrimination Complaints Excluded Form Coverage.** Complaints of discrimination are excluded from grievance coverage by OPM regulations. Accordingly, a grievance concerning a matter or matters about which the employee has filed a complaint of discrimination must be rejected, either wholly or partially as appropriate see app. A, par. 3.

e. **Reasons for Cancellation of Grievance.** A grievance may be canceled, either wholly or partially as appropriate, by the decision official under any of the following conditions:

(1) At the employee's request;

(2) Upon termination of the employee's employment, unless the personal relief sought by the employee can be granted after termination of employment;

- (3) Upon the death of the employee, unless the grievance involves a question of pay;
- (4) For failure of the employee to furnish required information;
- (5) For failure of the employee to duly proceed with advancement of the grievance.

f. **Written Notification of Cancellation of Formal Grievance.** The grievant and his or her representative will be notified in writing when a grievance is canceled, and provided with specific reasons for the cancellation.

11. ROUTING FORMAL GRIEVANCES

a. **Technical Review.** In cases where the facts are not in dispute and the primary issue involves only the interpretation of regulation or policy, instead of appointing an examiner, the decision official may forward the grievance for technical review and recommendations through appropriate channels to the Office of Human Resources Management (051). Situations where "the facts are not in dispute" are those instances where management essentially agrees with the grievant's statement of facts in the formal grievance, and the primary issue in dispute is regulatory or policy interpretation. The grievant and his or her representative will be provided with a copy of the decision official's letter to Central Office. Upon receipt of the request, the grievance will be forwarded to the appropriate organizational element in Central Office which has technical program responsibility in the matter(s) disputed. A technical review will be conducted and resulting recommendations transmitted by an appropriate Central Office line official to the decision official who will resolve the grievance as indicated in paragraph 12 this chapter.

b. **Appointment of Facility Grievance Examiner.** In cases where it is determined that an examiner is required, the decision official may appoint a subordinate employee to act as the grievance examiner. The grievance examiner will be fair, impartial, and objective, with demonstrated analytical and fact-finding skills. The grievance examiner will not be assigned cases in his or her service, division, or organizational component, and must be an employee who has not been involved in the matter being grieved and who does not occupy a position subordinate to any official who recommended, advised, made a decision, or who otherwise is or was involved in the matter being grieved. The grievant and any designated representative will be informed of the assignment. The examiner assigned will promptly review the case and determine the nature and scope of the inquiry appropriate to the issue(s) involved in the grievance.

c. **Appointment of Grievance Examiner From Outside VA Facility.** Decision officials should make every effort to appoint a local examiner to investigate an employee grievance. However, there may be instances where this is not practicable due to the nature of the grievance and/or the unavailability of an appropriate individual to act as the grievance examiner. Such grievances should be forwarded through appropriate channels to the Office of Human Resources Management (051) for assignment of a grievance examiner. Referral of grievances to Central Office should be minimized and must provide justifications as to why the grievance could not be handled by a grievance examiner appointed at the local level. Two copies of the grievance file will be included with the grievance. A copy of the grievance file will be maintained by the decision official. The grievant and his or her representative will be given a copy of the letter to Central Office requesting appointment of a grievance examiner. An examiner will be appointed within 5

days after the request and required files are received. Grievance examiners appointed by VA Central Office will be authorized to visit the grievant's facility, if appropriate.

d. **Grievance Inquiry.** At the examiner's discretion, the grievance inquiry may consist of:

- (1) The securing of documentary evidence, including such technical advice as may be needed;
- (2) Personal or telephone interview (statements of witnesses obtained by the examiner should be under oath or affirmation, without a pledge of confidence);
- (3) A group meeting;
- (4) hearing;
- (5) Any combination of the above.

e. **Hearings**

(1) Formal hearings should be limited to grievances involving complex matters or where important factual matters are in dispute. The decision to schedule a hearing is the prerogative of the examiner.

(2) If a hearing is held the examiner will determine how the hearing will be recorded and will have a verbatim transcript or written summary of the hearing prepared, including all pertinent documents submitted and accepted by him or her. When the hearing is recorded verbatim, the facility Director where the hearing is being held will provide the hearing room and services for recording the transcript, and will ensure that the transcript reaches the examiner within 10 days after the hearing is held. The examiner will make the transcript a part of the record of the proceedings. When the hearing is not recorded verbatim, a summary of pertinent portions of the testimony will be made by the examiner. In cases where the examiner travels to a different facility, the examiner may use the services of the grievant's facility or his or her own facility to record the summary, whichever the examiner deems appropriate. The summary will constitute the report of the hearing and is made a part of the record of the proceedings.

f. **Administering Oaths or Affirmations.** Examiners are authorized to administer oaths or affirmations for purposes of this section.

g. **Grievance File.** The examiner will ensure that the grievance file contains all documents related to the grievance, including evidence collected, statements of witnesses, notices and replies pertinent to the case, and the report of hearing when a hearing is held. On completion of the inquiry, the examiner will make the grievance file available to the employee and the employee's representative for review and comments. Their comments, if any, are due within 5 days after receipt of the grievance file and will be included in the file.

h. **Preparation of Examiner's Report.** After the employee and the employee's representative have been given an opportunity to review the grievance file, the examiner will prepare a report of findings and recommendations, and submit that report, with the grievance file, to the decision

official. The examiner will also furnish the employee and the employee's representative with a copy of the report. Guidelines for the report are contained in appendix C to this chapter, which should be provided to individuals assigned as examiners.

i. **Time Limits for Examiner's Report and Central Office Technical Reviews.** The examiner will submit the report and the grievance file to the decision official within 30 days for grievance examiners appointed locally or 45 days for grievance examiners appointed by Central Officer, after receipt of written notification of appointment as the grievance examiner. Central Office will issue a technical review within 30 days of receipt of such a request from the decision official.

12. DECISION ON GRIEVANCES

a. **Action by Decision Official--Examiner's Report.** Upon receipt of the grievance examiner's report of findings and recommendations, the decision official will:

(1) Accept the examiner's recommendation and issue a written decision to the employee within 15 days after the recommendation is received. The employee's representative will also receive a copy of the decision;

(2) Grant the relief sought by the employee, issuing the decision without regard to the examiner's recommendation; or,

(3) If the decision official determines that the examiner's recommendations are unacceptable, he or she will forward the examiner's recommendations and a specific statement of the basis for objection, with the grievance file, to the next higher supervisory level above the decision official. The decision official will also furnish the employee and the employee's representative with a copy of the statement on which the referral is based. The higher level review official will consult with the Office of Human Resources Management (051) and will render a final decision on the employee's grievance. Objections to the recommendations of the grievance examiner will be limited to the following grounds:

(a) The recommendations are contrary to law, regulation, or agency policy;

(b) The recommendations are not support by the evidence; or,

(c) The recommendations would establish a precedent that would have a detrimental impact upon the efficient operation of the VA.

b. **Higher Level Review.** In matters of judgment where the issues could have been decided more than one way, higher level review officials will not substitute their judgment for that of the grievance examiner, unless the examiner's recommendations fall into any of the three categories contained in subparagraph a(3) above.

c. **Action by Decision Official--Technical Review.** Central Office technical reviews and the resulting recommendations will be forwarded to the formal grievance decision official, and will

serve as the basis for the final decision. The decision official will issue the decision to the employee within 15 days after the technical review is received from Central Office.

13. ADMINISTRATIVE APPEALS

a. **Agency Appeal.** When separated for cause, including performance deficiencies, employees without veterans preference appointed under authority of Schedule A or Schedule B who have completed 1 year of current continuous service in the same or similar positions are entitled to appeal the separation action to a higher level authority. In the decision letter on the separation, the employee will be informed of his or her appeal right to the appropriate department head, Assistant Secretary or staff office director, and of the right to a hearing prior to a final decision on the employee's appeal. Sample language, and other provisions of chapter 752 of this part, as appropriate, apply in taking such separation actions. An appeal may be submitted at any time after receipt of the decision, but not later than 15 days after the effective date of the action. Evidence files will be established when taking action to separate an employee covered by the provisions of this paragraph. The evidence file and the employee's Official Personnel Folder will be sent through channels to the Office of Human Resources Management) when the employee has requested a hearing. The examiner assigned to conduct the hearing will do so in accordance with the provisions in paragraph 11f and will submit a report of findings and recommendations to the appropriate decision official within 30 days after completion of the hearing. The department head, Assistant Secretary or staff office director, or designee, will render a decision on the appeal within 20 days after receipt of the examiner's report. The decision will be final with no further right of administrative review of appeal.

b. **Appeals to Merit Systems Protection Board.** Employees with veterans preference who have completed 1 year of current continuous employment in a position outside the competitive service can appeal a separation to the Merit Systems Protection Board. The provisions of chapter 752 of this part, as appropriate, apply in taking such separation actions.

14. TRAVEL EXPENSES

Authorized travel expenses for grievance examiners assigned by VA Central Office will be borne by the VA in accordance with Government travel regulations. Travel expenses of grievants and witnesses will be paid by the VA where it is determined by a VA official or the grievance examiner that travel in connection with a grievance is necessary.

15. INFORMING EMPLOYEES

Information in this chapter should be brought to the attention of all employees. Copies of the chapter will be made available for review by employees upon request.

APPENDIX A. MATTERS EXCLUDED FROM COVERAGE

The following actions and complaints are excluded from coverage under the grievance procedure:

1. The content of published agency regulations and policy. An employee's allegation that locally established policy is in conflict with existing agency policy or regulations may be handled as indicated in par. 11a of this chapter;

2. A decision which is appealable to the (MSPB Merit Systems Protection Board) or subject to final administrative review by the OPM (Office of Personnel Management), the FLRA, Federal Labor Relations Authority, or the OWCP (Office of Workers' Compensation Programs) under law or regulations of the OPM, FLRA, or the OWCP; or any other matter for which final administrative authority lies outside the VA;

3. Allegations of discrimination on the basis of race, color, religion, sex, national origin, age over 40 and/or handicap, in connection with any decision or action. Such allegations may only be pursued as complaints of discrimination, pursuant to regulations of the Equal Employment Opportunity Commission also (see par. 10d).

4. Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a non-competitive promotion;

5. A preliminary warning notice of an action which, if effected, would be covered under a grievance or appeal system or excluded from coverage by paragraph 2 of this Appendix;

6. A return of a SES (Senior Executive Service) career appointee to the General Schedule or another pay system during the 1-year period of probation or for less than fully successful executive performance;

7. A reassignment of a SES appointee;

8. An action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade and pay than the position from which the employee was temporarily promoted;

9. An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with 5 CFR 335.102 (g);

10. The content of the critical elements and performance standards of an employee's position;

11. Nonadoption of a suggestion or disapproval of a quality step increase, performance award, or other kind of discretionary award, including SES performance awards and Presidential Rank awards for members of the SES;
12. A coverage determination or a merit increase or the lack of a merit increase under the Performance Management and Recognition System;
13. The termination of an employee serving a probationary or trial period after initial appointment for unsatisfactory performance or conduct;
14. The termination of an SES career appointee during probation for unsatisfactory performance;
15. An evaluation of performance for a member of the Senior Executive Service;
16. A return of any employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period;
17. Relief specified that is not personal to the grievant or is not subject to the control of management;
18. A grievance over a matter covered by a negotiated grievance procedure;
19. A grievance of an individual from outside the VA;
20. Grievances concerning the number of positions to be filled, or the grade level at which positions are advertised or filled;
21. An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which: (a) assigns the employee from one geographical location to another or (b) returns an employee from an overseas assignment;
22. Separation of employees with less than 1 year of current continuous employment appointed under authority of Schedule A or Schedule B;
23. A performance appraisal or overall rating assigned under the performance evaluation system (requests for review of these should be processed in accordance with provisions contained in MP-5, pt. I, ch. 430);
24. Terminations of temporary appointments.

APPENDIX B. SAMPLE GRIEVANCE FORMAT

TO: (Name, title, and mailing address)

SUBJ: Grievance

1. This is a (formal or informal) grievance under the VA grievance procedure.

(Note: If you are a bargaining unit employee and the matter you are grieving is covered under a negotiated grievance procedure, you must use that procedure rather than the agency grievance procedure. If you are unsure, consult your Labor Organization or Human Resources Office.)

2. The matter on which this grievance is based occurred on (give date) and is described in detail as follows: (Furnish sufficient detail to clearly identify the matter being grieved. Appropriate documents related to your grievance should be attached.)

2. The personal relief (i.e., corrective action) I seek is: (Specify clearly.)

(Note: "Personal relief" means a specific remedy directly benefiting you and may not include a request for disciplinary or other action affecting another employee. Failure to provide sufficient information relating to your grievance or to clearly specify the personal relief you are requesting will result in your grievance being rejected. It is preferable that you personally deliver your grievance when practicable. When mailing is used, the postmark usually determines the filing date of the grievance.)

Signature

Date

Attachments: (It is preferable to identify any attachments.)

APPENDIX C. EXAMINER'S REPORT

Grievance examiners should consider the following factors in preparing a report of findings and recommendations to the decision official:

1. After the employee and or representative have been given an opportunity to review the grievance file, the examiner must prepare a report of findings and recommendations. The report must show a determination of the factual issues in the grievance, based on analysis of evidence secured through the inquiry, and review of the grievance file. For each relevant and timely issue the examiner must analyze and weigh the evidence.

2. If the examiner finds that the employee has a reasonable basis for his/her grievance, the examiner must then consider whether the adjustment the employee has requested is reasonable and should be recommended.

3. The examiner's findings for each relevant and timely issue may be organized along the following lines: a) identification of the issue, b) analysis and weighing of evidence pertinent to the issue, and c) statement of whether the employee's grievance is valid and the requested adjustment is appropriate with reasons for the findings and recommendations.

4. If the examiner excluded any matter raised in the grievance because the matter was not covered under the grievance system, the report should explain why he/she believes it is not covered.

5. The examiner must submit the grievance file containing the report of findings and recommendations to the decision official and must furnish the employee and or representative a copy of the report within 30 days for grievance examiners appointed locally or 45 days for grievance examiners appointed by Central Office, after receipt of written notification of appointment as the grievance examiner.

6. The examiner must limit his or her findings and recommendations to those issues raised in the grievance.

7. The examiner will indicate in the report that the decision official must notify the grievant of his or her decision within 15 calendar days after receipt of the report.